EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes

and/or additions be unacceptable to applicant, an amendment may be filed as provided

by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be

submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview

with Sue Mack on May 16, 2008.

In the claims:

20. (Currently Amended) A promoter comprising at least one of each of the following

elements, or functional fragments thereof, in the 5' to 3' direction: (i) domain II which

comprises at least one member selected from the group consisting of subdomain II (a),

subdomain II (b), subdomain II (c), subdomain II (d) and domain III, wherein subdomain

II (a) is SEQ ID NO: 7;

(ii) domain I, which comprises at least one member selected from the group

consisting of subdomain I (a), subdomain (b), and subdomain (c), wherein subdomain I

(a) is SEQ ID NO: 18, or subdomain I (a) is a functional sequence with at least 75%

sequence identity to SEQ ID NO: 18;

(iii) minimal domain (b), wherein minimal domain (b) is SEQ ID NO: 5;

(iv) minimal domain (a), wherein minimal domain (a) is SEQ ID NO: 2;

(v) region between minimal promoter (a) and a transcription start site context,

wherein said region between minimal promoter (a) and said transcription start site

context is SEQ ID NO: 12;

(vi) transcription start site context, wherein said transcription start site context is

SEQ ID NO: 4;

(vii) 5' untranslated leader region, wherein said 5' untranslated leader region is

SEQ ID NO: 13;

(viii) translational initiation codon context, wherein said translational initiation

codon context is SEQ ID NO: 14;and

(ix) a polynucleotide encoding the amino acid sequence set forth in SEQ ID NO.

16.

39. (Currently Amended) A method for testing the level of expression of a

polynucleotide, comprising:

a) transforming a plant protoplast with a test construct, wherein said test

construct comprises a polynucleotide encoding a target or reporter polypeptide operably

linked with the 3' end of the promoter of claim 20 and wherein said polynucleotide is in

frame with <u>the polynucleotide encoding</u> SEQ ID NO: 16 of said promoter,

b) performing a transient GUS assay using the transformed plant protoplast

of (a), and

(c) comparing the assay results of (b) with results from a transient GUS assay

performed using a plant protoplast transformed with a control construct, wherein said

control construct comprises said polynucleotide encoding a target or reporter

polypeptide of (a) operably linked with a CaMV 35 S promoter, thereby testing the level

of expression of a polynucleotide.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHELE K. JOIKE whose telephone number is (571)272-5915. The examiner can normally be reached on M-F, 9:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Woitach can be reached on 571-272-0739. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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